The concession granted by the Government of Maharashtra because of the Bombay High Court Judgement in the case of M/s. Berar Oil Industries (26 STC 473) and withdrawal thereof.

Government of Maharashtra
Finance Department
Resolution No.STA-1199/CR-90/Taxation-1,
Mantralaya, Mumbai-400032, dated, 25th March,2004.

PREAMBLE :

Prior to 1st July,1981, as per section 12 of the Bombay Sales Tax Act,1959, dealers holding recognition were allowed to purchase raw materials and packing materials on the strength of declaration in Form 15 specified in recognition certificate at the concessional rate of tax for use by them in the manufacture of taxable goods for sale within the State. However, when the goods so manufactured were despatched by the dealer to his branches outside the State, there being no sale, it amounted to contravention of recitals of Form 15. For such contravention, the dealers were liable to levy of purchase tax under section 14(3) and consequentially for penalty under section 36(1) too.

02. In this respect, it may be recalled that the Bombay High Court in the case of M/s. Berar Oil Industries (36 STC 473) rejected prudent man's theory and declared that the pro-rata formula for computing the contravention of recitals of Form 15 was proper and rational. Accordingly, the Bombay High Court had decided the matter in favour of revenue. The Government in Finance Department had received various representations from the trade about the hardship caused to them because of the judgement of the High Court. The Yardi Committee appointed for overall review of operating sales taxation system in the State had also considered the very issue and made recommendation in para 5.25 of the Committee's Report supporting prudent man theory. This recommendation of the said Committee was accepted by the Government and decision was taken in 1978 to give relief to the trade based on the prudent man theory.

03. In this regard further to explain the administrative concession given by the Government, the Commissioner of Sales Tax had issued following circulars.

AMD-1176/b/sa-3264 Dated 13th February,1978.
Circular No. 2 of 1978

(ii) AMD-1176/b/sa-3264/21/ADM-3 Dated 21st June,1978.
Circular No. 20 of 1978.

(iii) ARR-1079/2744/ADM-3 Dated 1st December,1979.

Corrigendum No.ARR-1079/2744/9/ADM-3 Dated 9th January,1985.
Circular No. 2 of 1985

(v) ARR-1079/2744/9/ADM-3 Dated 14th January,1988.
Circular No. 3 of 1988.

In all these Circulars, all along how to operate the concession given by the Government in 1978 was explained by Commissioner. The Circular dated 13-02-1978 was withdrawn and substituted by another Circular dated 21-06-1978. The concession so given by the Government in 1978 was relating to purchase tax payable under section 14 of the Bombay Sales Tax Act,1959.

04. The Bombay Sales Tax Act, 1959 over the period had incorporated certain provisions afresh and certain existing provisions were amended. It was therefore necessary to examine whether the administrative concession given by the Government were to be continued further? Since the law is changed in a major way w.e.f. 1-07-1981, the administrative concession does not survive w.e.f. 1-07-1981, was the view that was emerging in a major way. The Commissioner of Sales Tax through Circular No. 4T of 2000 dated 1-02-2000 therefore informed the trade about the withdrawal of the concession given by the Government with effect from 01-07-1981.

05. M/s. Wipro Limited in Writ Petition No. 3600 of 2000 challenged the said circular dt. 01-02-2000 before the Bombay High Court at Aurangabad. The High Court delivered the judgement on 16-07-2003 declaring that,-

"Any alteration in the policy of the administrative concession could be done by the State Government alone, and

the clauses (ii) and (iii) of the impugned Circular dt. 1-02-2000 were set aside."

06. RESOLUTION :

The matter of issuing suitable instructions in the matter was under consideration of Government and after due consideration the Government has decided as under,-

"all aspects about the concession given by it in 1978 and continued thereafter till date, which was made available and clarified to the trade through Circular dt. 13-02-1978 as substituted by Circular dt. 21-06-1978 and further clarified through Circular by the Commissioner of Sales Tax, were continued till **31-03-2004.**

Where as now it is decided by the Government that with effect from **1st April,2004** the concession given earlier now stands withdrawn and shall not be available to the trading community from the said date **01-04-2004**."

By order and in the name of the Governor of Maharashtra.

Jamode

(S. N. JAMODE)
Deputy Secretary,
Finance Department,
Mantralaya, Mumbai.